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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION SIX

In re J.S., a Person Coming  
Under the Juvenile Court Law.

2d Juv. No. B281548  
(Super. Ct. No. PJ52267)  
(Los Angeles County)

THE PEOPLE,

Plaintiff and Respondent,

v.

J.S.,

Defendant and Appellant.

J.S., a minor, appeals from an order adjudicating him a ward of the court (Welf. & Inst. Code, § 602). Following a contested adjudication hearing, the juvenile court found true the allegation that he committed an assault (Pen. Code, § 240). The court placed J.S. on home probation.

J.S. contends the juvenile court violated his Fifth Amendment right against self-incrimination when it admitted

statements he made to the police without *Miranda*<sup>1</sup> warnings. We correct the disposition minute order to reflect the court's oral pronouncement, but otherwise affirm.

#### BACKGROUND

During an argument with his mother, 12-year-old J.S. held a lighter up to her. He flicked it on and off four or five feet away from her, and he threatened to burn her with it. She called the police.

When a sheriff's deputy arrived, J.S.'s mother said that J.S. "lit the lighter and repeatedly waved it at her." The deputy found J.S. sitting outside the apartment building by the side entrance. He brought J.S. back inside the apartment.

The deputy was in full uniform and had a weapon. He testified that J.S. was not free to leave at that time.

Once inside the apartment, the deputy asked J.S. what had happened. J.S. admitted he lit the lighter and waved it toward his mother. The deputy arrested J.S., advised him of his *Miranda* rights, and took him to the sheriff's station.

J.S. objected to the admission of his prearrest statements on the ground that he was not given his *Miranda* rights before he was questioned. The juvenile court overruled the objection after hearing the deputy's testimony regarding the detention. The court found that the initial "detention was temporary, and the nature does not go into sufficient detention or loss of ability to be considered an arrest."

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<sup>1</sup> *Miranda v. Arizona* (1966) 384 U.S. 436 (*Miranda*).

## DISCUSSION

### *Miranda*

J.S. contends the juvenile court erred in admitting his prearrest statement to the deputy because it was obtained in violation of *Miranda*.

The question of whether a defendant was in custody for *Miranda* purposes is a mixed question of fact and law that we independently review. (*People v. Ochoa* (1998) 19 Cal.4th 353, 401.) To the extent the facts are disputed, we review the trial court's factual findings regarding the circumstances of the interrogation for substantial evidence. (*People v. Leonard* (2007) 40 Cal.4th 1370, 1400.) Where, as here, the facts are largely undisputed we independently review the question of whether there was custodial interrogation. (*Ibid.*)

The juvenile court properly found there was no custodial interrogation. *Miranda* warnings are only required when a person is subject to custodial interrogation. (*Miranda*, *supra*, 384 U.S. at p. 444.) An interrogation is custodial when a reasonable person in the defendant's position would feel that his freedom of action was restrained to a "degree associated with formal arrest." [Citation.] (*Berkemer v. McCarty* (1984) 468 U.S. 420, 440 (*Berkemer*).) In determining whether a person was subjected to custodial interrogation, "[t]he totality of the circumstances is considered and includes '(1) whether the suspect has been formally arrested; (2) absent formal arrest, the length of the detention; (3) the location; (4) the ratio of officers to suspects; and (5) the demeanor of the officer, including the nature of the questioning.' [Citation.] Additional factors are whether the officer informed the person he or she was considered a witness or suspect, whether there were restrictions on the suspect's freedom

of movement, whether the police were aggressive, confrontational, and/or accusatory, and whether the police used interrogation techniques to pressure the suspect. [Citation.]” (*People v. Davidson* (2013) 221 Cal.App.4th 966, 972 (*Davidson*).) Juvenile status and age are also relevant factors if objectively apparent to the officer. (*J.D.B. v. North Carolina* (2011) 564 U.S. 261, 277.) No one factor is dispositive. (*Ibid.*)

Under the totality of circumstances, J.S. was not subjected to custodial interrogation. During the initial investigation, J.S. was not placed under formal arrest, nor was he handcuffed. Nothing in the record shows that detention was prolonged and the investigation occurred in J.S.’s own home. There was only one deputy present, and there is nothing to suggest that he was aggressive, confrontational, or accusatory in his demeanor or his questioning. Rather, the deputy simply asked J.S. what had happened and J.S. admitted waving the lighter toward his mother.

It is immaterial that the deputy believed J.S. was not free to leave. The objective circumstances of the interrogation are examined, not the subjective views of the interrogating officer. The officer’s views are only relevant if they are communicated to the person being questioned. (*Stansbury v. California* (1994) 511 U.S. 318, 324-325.) Nothing in the record shows that the deputy communicated to J.S. that he was not free to leave.

We have also considered the factors that weigh in favor of custodial interrogation. Such factors include the minor’s status and age (12 years old) and the fact the deputy was in uniform and had a gun. But, on balance, the totality of circumstances shows that J.S. was not in custody.

Furthermore, the detention was noncustodial because it was for the limited purpose of confirming the deputy's suspicion that J.S. assaulted his mother. "A custodial interrogation does not occur where an officer detains a suspect for investigation and the questioning is limited to the purpose of identifying a suspect or 'to obtain [sufficient] information confirming or dispelling the officer's suspicions. [Citation.]' [Citations]." (*Davidson, supra*, 221 Cal.App.4th at p. 970 [no custodial interrogation where an officer temporarily detains and handcuffs a suspect to ask whether a vehicle belongs to him]; see also *People v. Fulcher* (1987) 194 Cal.App.3d 749, 751-753 [no *Miranda* advisement required where an officer detains an individual and asks him questions while pat searching him].)

This case is like *In re Joseph R.* (1998) 65 Cal.App.4th 954, 957 (*Joseph R.*), in which there was no custodial interrogation where an officer questioned a juvenile outside of his friend's home, although he first placed the juvenile in his patrol car and in handcuffs for five minutes. The court reasoned that the detention was brief; the interview occurred after Joseph was released from temporary restraints; the officer never told Joseph that he was under arrest; and the officer told Joseph he was not obligated to answer any questions. (*Id.* at pp. 957, 961.)

As in *Joseph R.*, a reasonable person in J.S.'s situation would not feel that his freedom of action was restrained to a "degree associated with formal arrest." [Citation.]" (*Berkemer, supra*, 468 U.S. at p. 440.) No *Miranda* warning was required.

#### *Minute Order*

J.S. contends, and the Attorney General concedes, that there are several discrepancies between the oral

pronouncement and the minute order on the court's disposition. Where such a discrepancy exists, the oral pronouncement controls. (*People v. Mitchell* (2001) 26 Cal.4th 181, 185-186; *People v. Hartley* (2016) 248 Cal.App.4th 620, 637.) We will correct the minute order to strike the maximum time of confinement and amend or strike probation conditions 5, 9A, and 10 to reflect the oral pronouncement.

#### DISPOSITION

The clerk of the court is directed to amend the March 2, 2017, disposition minute order to strike the portion of the order regarding the six-month maximum time of confinement, strike "Los Angeles County" from probation condition 5, and strike probation conditions 9A and 10 in their entirety. As modified, the order is affirmed.

NOT TO BE PUBLISHED.

TANGEMAN, J.

We concur:

GILBERT, P. J.

YEGAN, J.

Mark R. Frazin, Judge

Superior Court County of Los Angeles

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Appeal, for Defendant and Appellant.

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